


FILED

JUL 1 2009

United States Court of Appeals for the

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 

Name of Movant Dorothy Henderson	Prisoner No. 11898-097	Case Number (leave blank)
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Place of Confinement **Federal Medical Center, Carswell - Unit: - 5 ; Building 3000 J-Street**
(List complete mailing address) **Post Office Box 27137 ; Fort Worth, Texas 76127**

IN RE: **DOROTHY HENDERSON**, MOVANT

- Name and location of court which entered the judgment of conviction from which relief is sought: United States District Court For The Eastern District Of California
- Parties' Names: United States Of America vs. Dorothy Henderson
- Docket Number: 2:99CR00294-001-GEB 4. Date of judgment of conviction: February 22, 2001
- Length of sentence: Please see attachment / Insufficient space to provide information
- Nature of offense(s) involved (all counts): See Attachment / Insufficient space for information

- What was your plea? (Check one) ☒ Not Guilty ☐ Guilty ☐ Nolo Contendere
- If you pleaded not guilty, what kind of trial did you have? Check one) ☒ Jury ☐ Judge only
- Did you testify at your trial? (Check one) ☒ Yes ☐ No
- Did you appeal from the judgment of conviction (Check one) ☒ Yes ☐ No
- If you did appeal, what was the

Name of court appealed to: U.S. Court Of Appeals For The Ninth Circuit

Parties' names on appeal: Dorothy Henderson vs. United States Of America

Docket number of appeal: unknown at this time Date of decision: unknown

**APPLICATION/MOTION PURSUANT TO TITLE 28 U.S.C. §2244 FOR FILING
SUCCESSIVE MOTION PURSUANT TO TITLE 28 U.S.C. §2255 FOR RELIEF**

ATTACHMENT TO PAGE 1 - Lines 5 and 6

Line 5:

Length of sentence

Count 1: 60 months;
Count 2: 36 months;
Count 3: 36 months; and
Count 5: 3 months.

All sentences to be served consecutively.

Further as to Count 5: a term of 33 month concurrently, and as to each of Counts 6 and 7; 60 months concurrently, all of which are to be served concurrently to Counts 1, 2, and 3 to the extent necessary to produce a total term of 135 months.

Line 6:

Nature of offenses

Count One 18 USC 371	Conspiracy to Defraud the United States
Count Two 26 USC 7206(2)	Aiding and Assisting in the Presentation of a False and Fraudulent Income Tax Return
Count Three 26 USC 7206(2)	Aiding and Assisting in the Presentation of a False and Fraudulent Income Tax Return
Count Five 26 USC 7206(2)	Aiding and Assisting in the Presentation of a False and Fraudulent Income Tax Return
Count Six 18 USC 1623	False Declarations Before a Grand Jury
Count Seven 18 USC 1623	False Declarations Before a Grand Jury

Dorothy Henderson v. United States of America

Result of appeal: denied

12. Other than a direct appeal from the judgment of conviction and sentence, have you filed any other petitions, applications for relief, or other motions regarding this judgment in any federal court? ☒ Yes ☐ No

13. If you answered "yes" to question 12, answer the following questions:

A. FIRST PETITION, APPLICATION, OR MOTION

- (1) In what court did you file the petition, application, or motion? Ninth Circuit Court Of Appeals
- (2) What were the parties' names? Henderson vs. U.S.A.
- (3) What was the docket number of the case? unknown
- (4) What relief did you seek? release from imprisonment
- (5) What grounds for relief did you state in your petition, application, or motion? unknown at this time

(6) Did the court hold an evidentiary hearing on your petition, application or motion? ☐ Yes ☒ No

- (7) What was the result? ☐ Relief granted ☒ Relief denied on the merits
☐ Relief denied for failure to exhaust ☐ Relief denied for procedural default
☐ Relief denied as premature
☐ Case transferred to Court of Appeals as request to file second/successive ~~§§§§§~~ § 2255 application for relief

(8) Date of court's decision: unknown

[NOTE: You must attach copies of all prior orders granting or denying relief under § 2255, even if you believe that you do not need this court's permission to file your current application.] Because of over-crowding and downsizing, this legal documentation was sent to storage and was lost.

B. SECOND PETITION, APPLICATION, OR MOTION

- (1) In what court did you file the petition, application, or motion? not applicable
- (2) What were the parties' names? n/a vs. n/a
- (3) What was the docket number of the case? unknown
- (4) What relief did you seek? vacation and release from prison
- (5) What grounds for relief did you state in your petition, application, or motion? unknown but not same as stated in this application.

(6) Did the court hold an evidentiary hearing on your petition, application or motion? ☐ Yes ☒ No

Supervised Release:

Upon release from imprisonment, the defendant shall be on supervised release for a term of 36 - months.

36 months as to Counts 1, 6, and 7; and 12 months as to Counts 2, 3, and 5. All terms are to run concurrently for a total term of supervised release of 36 months.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm as defined in 18 U.S.C. §921.

CRIMINAL MONETARY PENALTIES

Totals: \$600.00 Assessment

SCHEDULE OF PAYMENTS

The defendant shall pay the cost of prosecution.

\$4,094.47.

Dorothy Henderson v. United States Of America

(7) What was the result?

- ☐ Relief granted ☒ Relief denied on the merits
☐ Relief denied for failure to exhaust ☐ Relief denied for procedural default
☐ Case transferred to Court of Appeals as request to file second/successive ☐ 2255 application for relief

(8) Date of court's decision: not applicable

[NOTE: You must attach copies of all prior orders granting or denying relief under § 2255, even if you believe that you do not need this court's permission to file your current application.] Copies no longer available to me/ lost in mails when ordered to downsize.

C. THIRD AND SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS not application

For any third or subsequent petition, application, or motion, attach a separate page providing the information required in Items (1) through (8) above for first and second petitions, applications, or motions.

D. PRIOR APPELLATE REVIEW(S)

Did you appeal any order regarding your petitions, applications, or motions to a federal court of appeals having jurisdiction over your case? If so, list the docket numbers and dates of final disposition for all subsequent petitions, applications, or motions filed in a federal court of appeals. This documentation not available to me.

First petition, application, or motion	<input type="checkbox"/> Yes	Appeal No. <u>n/a</u>	Date _____	<input type="checkbox"/> No
Second petition, application, or motion	<input type="checkbox"/> Yes	Appeal No. <u>n/a</u>	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. <u>n/a</u>	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. <u>n/a</u>	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. <u>n/a</u>	Date _____	<input type="checkbox"/> No
Subsequent petitions, applications or motions	<input type="checkbox"/> Yes	Appeal No. <u>n/a</u>	Date _____	<input type="checkbox"/> No

If you did not appeal from the denial of relief on any of your prior petitions, applications, or motions, state which denials you did not appeal and explain why you did not. Did not appeal MIRANDA rights issue, this is newly discovered evidence of ineffective assistance of counsel.

14. Did you present any of the claims in this application in any previous petition, application, or motion for relief under 28 U.S.C. § 2255? (Check one) ☐ Yes ☒ No

15. If your answer to question 14 is "yes," give the docket number(s) and court(s) in which such claims were raised and state the basis on which relief was denied. Not applicable.

Not applicable

Dorothy Henderson v. United States Of America

16. If your answer to question 14 is "No," answer the following questions:

- A. State the claims which you did not present in any previous petition, application, or motion for relief under 28 U.S.C. § 2255: Newly discovered evidence of ineffective assistance of counsel in failure to protect U.S. Constitutional Fifth and Sixth Amendment rights of having been provided with my MIRANDA rights and being asked to sign a waiver. No law enforcement agents ever provided me with my MIRANDA rights or had me sign a Waiver of my U.S. Constitutional rights. In a new ruling of Constitutional law MIRANDA v. ARIZONA rights were declared not only a Fifth Amendment right but also
- B. State the reasons explaining why you did not present the above claims in any previous petition, application or motion for relief under 28 U.S.C. § 2255: a Sixth Amendment right.

I was unaware of this violation of my U.S. Constitutional rights untill having recently read it and had them explained to me here at the prison. My attorney never discussed this with either my spouse and I. This couldnot have been presented any earlier; as I had no knowledge of this right and am a lay person.

*NOTE: This Court will grant you authority to file in the district court only if you show that you could not have presented your present claims in your previous § 2255 application because... This was recently ruled by the U.S. Supreme Court in two (2) cases, this year (2009).

A. (For § 2255 motions only) the claims involve "newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [you] guilty"; or,

B. (For § 2254 petitions only) "the factual predicate for the claim could not have been discovered previously through the exercise of due diligence" and "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found [you] guilty of the offense"; or,

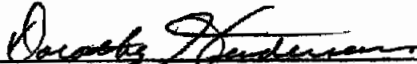
C. (For 28 U.S.C. § 2255 applicants) the claims involve "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court [of the United States], that was previously unavailable."

Movant prays that the United States Court of Appeals for the 9th Cir. issue an Order Authorizing the District Court to Consider Movant's Second or Successive Application for Relief Under 28 U.S.C. § 2255.


Movant's Signature Dorothy Henderson

I declare under Penalty of Perjury that my answers to all questions in this Motion are true and correct.

Executed on June 29, 2009
[date]


Movant's Signature Dorothy Henderson

PROOF OF SERVICE

A copy of this motion and all attachments must be sent to office of _____ the United States Attorney for the United States judicial district in which you were convicted (§ 2255 cases).

I certify that on June 29, 2009 I mailed a copy of this motion and all attachments
[date]

to _____ at the following address:

Movant's Signature Dorothy Henderson

Dorothy Henderson v. United States Of America